Supreme Court, U.S.
FILED

No. (1)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

Petitioner

v.

BERNARD HARWOOD

Respondent

PETITION FOR WRIT FOR CERTIORARI FROM SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

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QUESTIONS PRESENTED

I. Whether Hon. Judge Wooldridge, III, [outgoing judge who loss the election in 1992] can make a grossly incorrect ruling that violates the Constitutional rights of the Petitioner, Dr. Asam, under the first, fifth, and fourteenth amendments to the U.S. Constitution when Judge Wooldridge erroneoulsy granted a summary judgment in favor of an opposing candidate to Dr. Asam for the same judgship [Circuit Judge, Place #4, election of 1992], Bernard Harwood, Respondent, who completely ignored the law on libel [New York Times v. Sullivan, 273 Ala. 356, 144 So. 2d 25 (1962), 376 U.S. 254, (1964)], and constitutional law of liberty rights under the 5th and 14th amendments to U.S. Constitution i.e. stigmatization professional qualifications of Dr. Asam as lawyer [See Clemons v. Dougherty, 684 F. 2d 1365 (11th Cir., 1992)], triggering civil rights violations against Dr. Asam under 42 U.S.C. §1983, when candidate for judge, Bernard Harwood, knowingly published that he was the "only" qualified candidate when Bernard Harwood was the Republican nominee and Dr. Asam was the Democratic Nominee

for the same judgship when Bernard Harwood made the following false statement with reckless disregard for the truth in numerous ads in the media, [TV, radio, and Tuscaloosa News], which stated,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for circuit Judge, Place #4". [Emphasis added]?

II. Whether the Hon. Judge Wooldridge, III, further made gross error in granting summary judgment when he ignored the objecting to Mr. Gill, the lawyer for Bernard Harwood, who did not timely respond to the summary judgment, a violation of Rule 56, of the Alabama Rules of Civil Procedure, and allowed Mr. Gill to bring an issue of election contest which was non-existent in the original case to "cover up" for the destruction of signs by the "Harwood teams" such as complete destruction of Asam signs the night before the election in the City of Tuscaloosa, and the replacement of Asam big signs [4 x 20 feet signs] with Harwood big signs [4 x 20 feet] signs in the same location and place and failure to respond to harassing communications for which a

police record was made on Asam's answering machine concerning Asam's signs would be "cut up" if not removed, and Asam's signs were "cut up", when the voice was from a Harwood worker in the election campaign, and this destruction of Asam's signs was a violation of her rights under the first Amendment to the U.S. Constitution?

III. Whether the Supreme Court of Alabama infringed upon the constitution right of due process of Dr. Asam in the Alabama Courts under the 5th and 14th Amendments to the U.S. Constitution because the Supreme Court of Alabama now has a new procedure under Rule 53, Alabama Rules of Appellate Procedure, [See Appendix for copy of Rule 53] when the Supreme Court of Alabama was inconsistent in ruling according to own law on summary judgment for which the elements for summary judgment are found in the following cases: Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985); Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984); and Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988), because of disputed facts of whether or not

Bernard Harwood made knowingly made false statement claiming he was the "only" qualified candidate for the same judgship as Dr. Asam in Bernard Harwood' quote:

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for circuit Judge, Place #4". [Emphasis added]?

IV. Whether Judge Wooldridge failed to rule according to the law and Dr. Asam's rights under the first amendment to the U.S. Constitution were violated because the Judge failed to rule according to the law on "actual malice" as stated in the New York Times v. Sullivan, supra case when Dr. Asam was a public figure since she was the Democratic nominee and Bernard Harwood, was the Republican nominee for the same judgship when Bernard Harwood knowingly made the false statement that he was the "only" qualified candidate in his statement

"On November 3rd, vote for Judge Benerard Harwood, the only qualified candidate for circuit Judge, Place #4." [Emphasis added], and Judge Wooldridge was a "Democrat for Harwood" in the 1992 election?

V. Whether the Supreme Court of Alabama's new Rule 53, Alabama Rules of Appellate Procedure, is repugnant to U.S. Constitution because this new procedural rule allows the highest court of the state to write "Affirmed. No opinion." just to move cases without regard to the rights of plaintiffs and whether this Rule 53 is contributing to the violation of the petitioner's due process rights of Dr. Asam to have the instant case reviewed in the highest court of the state i.e. has the petitioenr's due process rights under the 5th and 14th amendments to the U.S. Constitution been infringed upon because of this new Procedural Rule 53 which should be voided?

TABLE OF CONTENTS

	Page
Table of Contents	iv
Questions Presented for Review	i
Parties to the Proceeding	vi
Oral Argument Requested	vi
Citations of Authority	v
Opinions below	1
Jurisdiction	2
Statement of Case	4
Statement of the Facts	7
Reasons for Writ of Certiorari	12
Conclusion	28
Appendix	a-1

CITATIONS OF AUTHORITY

Page

American Benefit Life Insurance Co. v. McIntyre, 375 So. 2d 239 (Ala. 1979) .. 26

Bantam Books, Inc. v. Sullivan, R.I., 1963 83 S Ct 631, 372 U.S. 58 9 L. Ed 2d 584 21

Booth v. United Services Auto Association 469 So. 2d 1281 (Ala. 1985) 18

Fulton v. Advertiser Co., 388 So. 2d 533 (Ala. 1980), cert. denied 449 U.S. 1125 & 1131, 101 S Ct 942, 954, 67 L. Ed. 2d 111 & 119. .....iii,17,18

Harte-Hanks Communications v. Connaughton, 491 U.s. 657, 109 S Ct 2678, 105 L Ed. 2d 562 (1989) 26

Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988). iii,17,19

Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982) i,14

Horwitt v. Horwitt, D.C., Conn. 1950 90 F. Supp. 529 15

Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983) 20,23

Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982) 25

Monroe v. Pape,
365 U.S. 167, 172 (1961) 25

New York Times v. Sullivan, 273 Ala. 356,
144 So. 2d 25 (1962, 376 U.S. 254, at
255, (1964) i,9,13,21,26

Paul v. Davis, 424 U.S. 645,
96 S Ct 1154, 47 L Ed 366 (1976) ... 24

Pruitt v.Elliott,
460 So. 2d 1275, (Ala. 1984) iii,17,18

Samuels v. District of Columbia,
770 F. 2d 184, C.A.D.C. 1985 25

Standard Oil Co. v. Graves, Wash. 1919,
49 S Ct 320, 269 U.S. 389, 63 L Ed 662. 15,22

Velger v. Cawley
525 F. 2d 334 (2nd Cir. 1975) 21

Book

Section 1983 Litigation: Claims, Defenses,
Fees, M.A. Schwartz, John E. Kirklin, John
Wiley & Sons, 1986, p. 101 25

Other

Rule 53, Alabama Rules of Appellate Procedure
v,4,12,14,16,17
18,20,22,23,a-7

42 U.S.C. § 1983 ..... i, 3,6,10,24,25

PARTIES TO THE PROCEEDING

The Plaintiffs/Appellants/Petitioners is:

Julia McCain Lampkin Asam, Ph.D.,J.D.

The Defendants/Appellees/Repondents is:

Bernard Harwood

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

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OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1257 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without DUE PROCESS OF LAW: nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

United States Constitution, Amendment I.,

"Congress shall make no law respecting an establisment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Federal statute

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United

States, or other person within the jurisdiction privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

See Rule 53, Alabama Rules of Appellate Procedure, reprinted in Appendix.

STATEMENT OF THE CASE

This is a political case between the Democratic nominee Julia Lampkin Asam, Ph.D.,J.D., and the Republican nominee, Judge Bernard Harwood, for the same judgship, Circuit Judge, Place #4, in the Nov. 3, 1992 election in which Judge Harwood made the following false statement even after notice to cease making the false statement,

"On November 3rd, vote for Judge Bernard Harwood only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

This statement was made in numerous ads in the Tuscaloosa News, TV WCFT Channel 33, and radio.

Judge Harwood after notice of this false statement "the only qualified candidate for Circuit Judge, Place #4" [Emphasis added.] did knowingly

deliberately, maliciously, and with reckless disregard for the truth did publish in the press ads that were false and deceitful, and knowingly with intention to misrepresent the true facts by Bernard Harwood claiming he was the "only" qualified candidate when Dr. Asam was the Democratic nominee and Bernard Harwood was the Republican nominee. Bernard Harwood was knowingly misleading the voters with his false campaign ads in the media and thus "stealing votes" as well as permanently stigmatizing Dr. Asam in her profession as a lawyer. See Plaintiff #5 of Harwood Deposition, [Can be requested from the Supreme Court of Alabama], notice of making false statement in ads [Also see copy in Appendix].

Since the instant case is a political case between two public figures the instant case turns on the reckless continuance of Judge Harwood libeling Dr. Asam, and Judge Harwood making false statements that he was "the only qualified candidate for Circuit Judge, Place #4, [Emphasis added.], when in reality he was not the only qualified candidate for the same judgship, Circuit Judge, Place #4, since Dr. Asam was

also candidate as Democratic nominee for this same judgship, Circuit Judge, Place #4 that Judge Harwood was a candidate as the Republican nominee.

The original case was timley filed on Nov. 2, 1992, and the Amended Complaint was filed on December 23, 1992, showing that the constitutional rights of Dr. Asam's liberty rights were violated with Bernard Harwood's false statement "the only qualified candidate for Circuit Judge, Place #4 after notice, stigmatized her, embarassed her, and caused her financial loss, by damaging her reputation as a lawyer and candidate for Circuit Judge, Place #4. A violation of the 5th and 14th Amendments triggers the 42 U.S.C. § 1983 claim of civil rights of Dr. Asam being violated by Judge Harwood's false statements in all three media [Tuscaloosa News, TV, and radio] when Bernard Harwood made the statement he was "the only qualified candidate for Circuit Judge, Place #4", Affidavit by Asam is in Vol. I, pp. 46-47 of record in Supreme Court of Alabama.

The affidavit of Bernard Harwood is found in Vol. I, pp. 50-53, where Judge Harwood denies he made a false statement when he stated on p. 51 "I honestly believed then, as I do now, that I was "the only qualified candidate', when Judge Harwood was the Republican nominee and Dr. Asam was the Democratic nominee. The libel is not concerned with Judge Harwood's experience but the false statement by Harwood when he stated "the only qualified candidate for Circuit Judge, Place #4," [Emphasis added.] especially since Judge Harwood was knowingly making this false statement [Vol. I, pp. 9-11].

STATEMENT OF THE FACTS

The Petitioner incorporates all facts stated above in the Statement of the Case and states that Bernard Harwood was knowingly and deliberately after notice continuing in all media [Tuscaloosa News, TV, and radio] to publish numerous false and misleading campaign ads which libeled Dr. Asam when Bernard Harwood made the following statement,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4." [Emphasis added.] Video of ad is in the record in the Supreme court of Alabama.

This is a political lawsuit between the Democratic nominee, Julia Lampkin Asam, and Republican nominee, Bernard Harwood, who were candidates in the November 3, 1992, election campaign for the same judgship, Circuit Judge, Place #4.

Judge Harwood has completely ignored the true facts of the qualifications of Dr. Asam and to make a statement that Judge Harwood is "The only qualified candidate for Circuit Judge, Place #4" [Emphasis added.], is a lie and is misleading the public concerning the qualifications of his opponent, Dr. Asam. Mr. Harwood could have said he was the "most qualified" "more qualified" or any other statement except the word "only" which is a false statement since Dr. Asam had a Ph.D., and J.D., as well as other degrees and experience as a

practicing lawyer, and her qualifying fee had been accepted; therefore, Judge Harwood was making clearly a false statement by using the word "only" in the above quote. Judge Harwood was "taking votes" from Dr. Asam by libeling her after he was noticed to stop libeling her, but Judge Harwood continued to recklessly libel her in three press medias [newspaper, radio, and TV] by his false and deceitful advertisement in his ads. [Vol. I, p. 3].

Defendant, Judge Harwood cannot claim judicial immunity in this instant case since Judge Harwood is sued as a candidate for the Circuit Judge, Place #4. Judge Harwood exceeded any immunity and/or privilege he might have had when Judge Harwood knowingly made a false statement and made the false statement with complete disregard of the truth which is "actual malice" as defined by the New York Times v. Sullivan case supra, even when a "public figure" when Judge Harwood made the false statement knowingly that he was the

"only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

There is no doubt about it that Judge Harwood not only libeled Julia Asam individually but libeled her in her business as a lawyer and went further and stigmatized her to the point that Judge Harwood violated the liberty rights of Dr. Asam under the 5th and 14th amendments to the U.S. Constitution, and stigmatizing with false information comes under the 42 U.S.C. § 1983 claims which were added to this instant case by Amended Complaint since Judge Harwood was clearly "acting under color of state law" since he was also a judge running as a judge candidate.

The point is that only one qualification to be a judge that Dr. Asam can show would be a win for the Plaintiff/Petitioner because of the word "ONLY" as quoted above.

Judge Harwood has truly stigmatized Dr. Asam as a lawyer when she had to resign because the co-counsel was afraid of her just being present in the courtroom in front of the jury, when the case was filed by her to start with,

and she returned the said case two times with a win from the Supreme Court of Alabama with reverse and remand [See CV 90-129] [Vol., 1, p. 59]. Also see Garner's affidavit [Vol. I, p. 135] that shows Harwood's "false ads" were stigmatizing and interferring with her practice of law as a lawyer and caused her monetary damages.

REASONS FOR WRIT OF CERTIORARI

Questions Presented I-V will be discussed together below as to the Rule 53, Alabama Rules of Appellate Procedure, being REPUGNANT TO THE THE U.S. CONSTITUTION, since rule 53 [see the Appendix for copy] of the Supreme Court of Alabama ruling "Affirmed. No opinion." was inconsistent as to federal law questions as well as inconsistent with the state's own law on summary judgment involving the first, fifth, and fourteenth amendments to the U.S. Constitutional rights of Dr. Asam not to be libeled with false statements by a seated judge "acting under color of state law" since Judge Harwood used the word "judge" in all his false and deceitful ads,misrepresenting the qualifications of Dr. Asam. All the ads containing the false statements in all media [newspaper, TV and Radio] stated as follows:

> "On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4." [Emphasis added.]

This is a political case where Judge Harwood was publishing false ads about Dr. Asam when both Asam and Harwood were public figures running for the same judgship in the 1992 election.

Specifically the Supreme Court of Alabama has not ruled according to the New York Times v. Sullivan, 273 Ala. 356, 144 So. 2d 25 (1962), 376 U.S. 254, at 255, (1964), which states,

> "Factual error, content defamatory of official reputation, or both are insufficient to warrant an award of damages unless "actual malice" -- knowledge that statements are false or in reckless disregard of the truth -- is alleged and proved. [Emphasis added.]

Judge Harwood clearly had knowledge that he was making false statements "under the color of state law"and violating the the civil rights of Dr. Asam when Judge Harwood was claiming he was the "only" qualified candidate when in reality Judge Harwood was the Republican nominee and Dr. Asam was the Democratic nominee. Not only did the false statements cause Dr. Asam to lose votes

because of Judge Harwood's false and unethical statement of claiming that he was the "only" qualified candidate for the same judgship as Dr. Asam, [Circuit Judge, Place #4].

The second case, Clemons v. Dougherty County, Georgia, 684 F. 2d 1365 (11th Cir. 1982), which the Supreme Court of Alabama has ignored and is inconsistent, is due to the fact that the Clemons case supra precludes summary judgment when **stigmatization** due to false statements which are the facts in this instant case, i.e. this case has disputed facts of **whether false statement or not** since Asam stated and proved a false statement by Harwood and presented proof in the facts, and Harwood claims not a false statement when in reality he has no proof.

The point is in the instant case because of the procedural rule 53, being repugnant to the U.S. Constitution, Dr. Asam has received no due process under the 5th and 14th amendments to the U.S. Constitution in any court. Further, because of the violation of Dr. Asam's liberty rights with the

false statment of Judge Harwood using the word "only", Dr. Asam's liberty rights due to stigmatization of Dr. Asam as a person and as a candidate in same judgship campaign, under the 5th and 14th Amendments to the U.S. Constitution have been violated.

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

Since the instant case is a political case between two public figures, the instant case turns on the reckless continuance of Judge Harwood libeling Dr. Asam, and making false statements that he was "the only qualified candidate for Circuit Judge, Place #4", [Emphasis added], when in reality he was not the only qualified candidate for the same judgship, Circuit Judge, Place #4, since Dr. Asam was also candidate for this same judgship, Circuit Judge, Place #4.

The bottom line is that Hon. Judge Wooldridge, III of the lower trial court, first ignored the constitutional rights of Dr. Asam's first, fifth and fourteenth amendments to the U.S. Constitution as stated above, and the Rule 53, [See Appendix for rule 53, Alabama Rules of Appellate Procedure which is repugnant to the U.S. Constitution since the highest state court, Supreme Court of Alabama, new rules with rule 53, "Affirmed. No opinion." so that no one knows what is happening as to law.

The point is Dr. Asam is in opposition to this Rule 53, and ths "No opinion" policy that the Supreme Court of Alabama now has started because there is no justice to a plaintiff when the court fails to state the law.

Rule 53 [See Appendix for rule 53] is again repugnant to the U.S. Constitution when the highest state court, Supreme Court of Alabama, does not rule according to own law on summary judgment in the following cases:
Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985); Pruitt v. Elliott, 460 So. 2d 1275,(Ala. 1984); and Hightower & Co. v. U.S. Fidelity & Guar. 527 So. 2d 698, at 699 (Ala. 1988), i.e. because of disputed facts as to whether Bernard Harwood made knowingly false statement claiming he was the "only" qualified candidate for the same judgship as Dr. Asam in Judge Harwood's quote:

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit Judge, Place #4". [Emphasis added].

and disputed facts as to destruction of signs by Hardwood workers as well as disputed facts to harassing communications by Harwood workers on Asam's answering machine for which there was a police record and tape transcript, clearly the state court not following their own law on summary judgment especially due to a new procedure rule, rule 53, which is repugnant to the U.S. Constitution, this Writ of Certiorari should be granted.

The elements of summary judgment are found in the following Alabama two cases:

See Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985), which states,

> "To grant summary judgment, trial court must find that there is no genuine issue of material fact and that movant is entitled to judgment as matter of law. Rules Civ. Proc., Rule 56."

Also see Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984), which states,

"Summary judgment is proper when there is no genuine issue of material fact and moving part is entitled to judgment as matter of law; all reasonable doubts concerning existence of genuine issue of fact must be resolved against moving party. Rules Civ. Proc. Rule 56 (c)."

However, with the new state policy in the Supreme Court of Alabama to rule "Affirmed. No Opinion," the instant case should be reversed and remanded for a jury trial of all triable issues, since no one knows what a court is doing when receive a notice of "No opinion." or whether the case was even heard by any justice.

See Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988), which states,

> "Granting Summary Judgment is nondiscretionary function of trial court, and no presumption of correctness attaches to such decision upon appellate review. Rules Civ. Proc., Rule 56 (c)."

Supreme Court of Alabama infringed upon the constitution right of due process of Dr. Asam in the Alabama Courts under the 5th and 14th Amendments to the U.S. Constitution because the Supreme Court of Alabama now has a new procedure under Rule 53, Alabama Rules of Appellate Procedure, [See Appendix for copy of Rule 53] when the Supreme Court of Alabama was inconsistent in ruling according to own law on summary judgment for which the elements for summary judgment are found in the following cases: Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985); Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984); and Hightower & Co. v. U.S. Fidelity & Guar., 527 So. 2d 698, at 699 (Ala. 1988).

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

Judge Wooldridge failed to rule according to the law and Dr. Asam's rights under the first amendment to the U.S. Constitution were violated because the Judge failed to rule according to the law on "actual malice" as stated in the New York Times v. Sullivan, supra case when Dr. Asam was a public figure since she was the Democratic nominee and Bernard Harwood, was the Republican nominee for the same judgship when Bernard Harwood knowingly made the false statement that he was the "only" qualified candidate in his statement

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for circuit Judge, Place #4." [Emphasis added].

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

Supreme Court of Alabama's new Rule 53, Alabama Rules of Appellate Procedure, is repugnant to U.S. Constitution because this new procedural rule allows the highest court of the state to write "Affirmed. No opinion." just to move cases without regard to the rights of plaintiffs and this Rule 53 is contributing to the violation of the petitioner's due process rights of Dr. Asam to have the instant case reviewed in the highest court of the state i.e. THE PETITIONER'S DUE PROCESS rights under the 5th and 14th amendments to the U.S. Constitution been infringed upon because of this new Procedural Rule 53 which should be voided?

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its

necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

Supreme Court of Alabama infringed upon the constitution right of due process of Dr. Asam in the Alabama Courts under the 5th and 14th Amendments to the U.S. Constitution because the Supreme Court of Alabama now has a new procedure under Rule 53, Alabama Rules of Appellate Procedure, [See Appendix for copy of Rule 53]

Judge Harwood was a seated judge acting "under color of state law" because Judge Harwood always used the word JUDGE when he knowingly made the false ad statement,

"On November 3rd, vote for Judge Bernard Harwood, the only qualified candidate for Circuit, Judge, Place #4." [Emphasis added.]

and therefore the 42 U.S.C. § 1983 claims are valid.

See 42 U.S.C. § 1983, which states,

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress."

See Paul v. Davis, 424 U.S. 645, 96 S Ct 1154, 47 L Ed 366 (1976).

The civil rights act of 1871 (42 U.S.C.A. § 1983) does not create substantive rights, but provides express federal remedy against state officials for deprivation of rights established elsewhere in federal law. See Samuels v. District of Columbia, 770 F. 2d 184, C.A.D.C., 1985.

See book Section 1983 Litigation: Claims, Defenses, Fees, M.A. Schwartz, John E. Kirklin, John Wiley & Sons, 1986, on p. 101, states,

"§5.9 Tests to Determine State Action -- In General... The Court did state that, to find state action, two general requirements must be fulfilled. First, "the deprivation must be caused by the exercise of some right or privilege created by the state or by a person for whom the state is responsible. [See Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, (1982).] Second, the defendant "must fairly be said to be a state actor. [See Lugar case].

See Monroe v. Pape, 365 U.S. 167, 172 (1961)

"The Two principles "collapse into each other when the claim of a constitutional deprivation is directed against a party whose official character is such as to lend the weight of the

state to his decisions."

The fact that both Dr. Asam and Judge Harwood were political figures as candidates for judge, which triggers the instant case coming under the definition of "actual malice", which is defined "knowledge that statements are false or in reckless disregard of the truth" [See New York Times v. Sullivan, supra].

See Harte-Hanks Communications v. Connaughton, 491 U.S. 657, 109 S. Ct 2678, 105 L Ed 2d 562 (1989). Whether the plaintiff is a public figure, also see Fulton v. Advertiser Company, 388 So. 2d 533 (Ala. 1980), cert. denied 449 U.S. 1125 &1131, 101 S. Ct 942, 954, 67 L. Ed. 2d 111 & 119.

In the instant case "actual malice" is clearly shown as defined in the New York Times v. Sullivan, supra case as stated above. Also see American Benefit Life Insurance Co. v. McIntyre, 375 So. 2d 239 (Ala. 1979). The Respondent has failed to show no "actual malice" was shown, since Judge Harwood received the notice letter October 20, 1992 [Plaintiff's #5 in the deposi-

tion], and Judge Harwood, knowingly and deliberately was publishing false ads by making the statement that he was the only qualified candidate for the same judgship, Circuit Judge, Place #4, that Dr. Asam was also running for Place #4 judge. Judge Harwood was the seated judge running as the Republican Nominee and Dr. Asam was the Democratic Nominee.

As to the order dated January 13, 1993, the trial court judge has printed wrong statute since not 41 U.S.C. § 1983 but 42 U.S.C. § 1983 in Complaint. Clearly, by Judge Harwood using the word "judge" and a seated judge he was "acting under color of state law when he published false ads and clear and convincing evidence was presented that Dr. Asam was stigmatized as a lawyer and candidate for judge in 1992.

The issue of election contest was not in the original complaint in paragraph 2 of the order dated January 13, 1993, and is moot; however, the court used this alleged election contest to ignore fraud and harassing telephone call which stated destruction of Asam's signs and a Harwood worker made the call. Gross error by the court

since disputed facts on destruction of signs and actual harassing telephone conversation on Asam's answering machine [transcript in original complaint] and should have been jury question.

As to paragraph 3 of the order dated January 13, 1993, the issue of whether a defamatory or actionable libel should be decided by the jury because of disputable facts. See Booth case above. The court was wrong since no opinion, because direct quote from false ads by Judge Harwood. Disputed facts as to whether Judge was "acting with reckless disregard for the truth", a jury question.

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

Julia Asam

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APPENDIX

IN THE CIRCUIT COURT OF TUSCALOOSA

COUNTY, ALABAMA

JULIA McCAIN LAMPKIN ASAM, Ph.D.,J.D.

Plaintiff,

v. Civil Action No. CV-92-1348

JUDGE BERNARD HARWOOD

Defendant

ORDER

On January 11, 1993, this matter came before the Court on the parties' Cross-Motions for Summary Judgment. Defendant has also previously filed motions to dismiss and/or judgment on the pleadings. Since evidentiary matters outside the pleadings are now before the Court and were considered by the Court, such motions are treated as motion for summary judgment also, R. 12(b) and (c), A.R.Civ.P. After full consideration of the pleadings, the supporting affidavits, filed and cited depositions, and all other evidence filed herein, and after hearing the arguments from both parties thereon, the Court finds:

1. As to the Plaintiff's claims asserted under 41 U.S.C. § 1983, there is no evidence of any action taken or done under color of state law, no deprivation of any protected interest, nor any actionable stigmatization to give rise to support Plaintiff's claim, and summary judgment in favor of Defendant is due to be granted.

2. As to Plaintif's claims for unfair campaign practices, the affidavits and depositions established that there is no evidence that any of the alleged matters were carried out, autho ized, directed or ratified by the Defendant or any person on his behalf, nor is there any evidence of the identity of any person alleged to have committed any of the facts averred in the complaint, including any destruction, damage or removal of any campaign signs of the making of an alleged harassing telephone call. Further, it is the finding of the Court that the allegations contained in the complaint as to unfair campaign practices do

not state a private civil cause of action outside of the context of an election contest It is without dispute that Plaintiff has not filed an election contest within the applicable election laws and the time limit for doing has expired. Summary Judgment on such claims is therefore due to be granted.

3. As a matter of fact and law, the campaign advertisement statements about which Plaintiff complaints, within context of plaintiff's seeking election to public office, do not constitute an actionable libel, but were protected statements of opinion. Plaintiff has also failed to establish any material disputed issue of fact to show that the statements were false in the context made, or were known or believed by Defendant to have been false. Summary judgment is therefore also due to be granted in favor of Defendant as to Plaintiff's defamation claims.

"It is therefore CONSIDERED, ORDERED AND ADJUDGED:

1. That summary judgment be and is hereby GRANTED in favor of Defendant as to each and all of Plaintiff's claims;

2. That Plaintiff's motion for summary judgment be and hereby is DENIED.

3. That a final judgment in favor of Defendant on all calims be and is hereby ENTERED and GRANTED.

4. Costs are taxed to Plaintiff.

Done this the 13th day of January, 1993.

s/ Robert V. Wooldridge III
CIRCUIT JUDGE

CC: Julia Asam, Esquire
Plaintiff - pro se
Richard Gill, Esquire
Attorney At Law

APPENDIX II

STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE SUPREME COURT

OCTOBER TERM, 1993-94 October 8, 1993

1921277

Julia McCain Lampkin Asam v. Judge Bernard Hardwood, Appeal from Tuscaloosa Circuit Court (CV-92-1348)

ADAMS, JUSTICE AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)E), Ala. R. App.P.

Hornsby, C.J., and Shores, Houston, Steagall, and Ingram, JJ., concur.

APPENDIX III

IN THE SUPREME COURT OF ALABAMA

December 3, 1993

1921277

Julia McCain Lampkin Asam v. Judge Bernard Harwood. (Tuscaloosa: CV-92-1348)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

COOK, J. - Hornsby, CJ., Shores, Houston, Steagall and Ingram, JJ., concur. s/ Robert G. Esdale, Clerk

RULE 53. OPINIONS AND "No OPINION"

CASES OF THE SUPREME COURT

AND THE COURT OF CIVIL APPEALS

(a) Affirmance Without Opinion. The Supreme Court of the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if court determines.

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous.

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings of that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a judgment based on a directed verdict, and judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Writ for Certiorari was sent to Mr. Richard H. Gill, Attorney At Law, P.O. Box 347, Montgomery, Alabama 36101 this 24 day of February 1994.

Julia Aaron